



## 1997 ASSEMBLY BILL 808

February 19, 1998 - Introduced by Representatives ALBERS, GRONEMUS, JENSEN, SYKORA, SERATTI, MUSSER, SPILLNER, GOETSCH, BRANDEMUEHL, JOHNSRUD, SCHAFFER, HAHN, GUNDERSON, OTTE, FREESE and SKINDRUD, cosponsored by Senators WELCH, DRZEWIECKI, SCHULTZ and FARROW. Referred to Committee on Land Use.

1     **AN ACT to create** 59.69 (4i), 60.61 (3e) and 62.23 (7) (hg) of the statutes; **relating**  
2           **to:** a local zoning ordinance or resolution that is intended to protect  
3           environmentally sensitive areas.

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### *Analysis by the Legislative Reference Bureau*

Under current law and court opinions, a zoning ordinance or resolution of a political subdivision (city, village, town or county) is presumed to be valid and must be reasonably related to a legitimate public purpose. A person challenging the validity of a zoning ordinance has the burden of showing why the ordinance is invalid, unreasonable or arbitrary and capricious.

This bill changes the burden of showing why certain zoning ordinances or resolutions of a political subdivision are invalid and creates certain requirements for zoning ordinances or resolutions that intend to protect the natural values of an environmentally sensitive area. Under the bill, the governing body of a political subdivision that intends to zone in such an area must prepare a comprehensive written record to document its rationale for the ordinance or resolution. If the zoning ordinance or resolution is challenged in court, the bill requires a court to invalidate any part of the ordinance or resolution about which the governing body is unable to produce clear, satisfactory and convincing evidence from the written record that indicates the rationale for the ordinance or resolution.

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 59.69 (4i) of the statutes is created to read:

2           **59.69 (4i)** ENVIRONMENTALLY SENSITIVE AREAS. If the board enacts an ordinance  
3 or adopts a resolution under this section after the effective date of this subsection ....  
4 [revisor inserts date], or amends an ordinance or resolution under this section after  
5 the effective date of this subsection .... [revisor inserts date], that is intended to  
6 protect the natural values of an environmentally sensitive area, the board shall  
7 prepare a comprehensive written record to document its rationale for the newly  
8 created or amended ordinance or resolution. If the newly created or amended  
9 ordinance or resolution is the subject of judicial review, a court shall invalidate any  
10 part of the ordinance or resolution about which the board is unable to produce clear,  
11 satisfactory and convincing evidence from the written record that indicates the  
12 rational for the ordinance or resolution.

13           **SECTION 2.** 60.61 (3e) of the statutes is created to read:

14           **60.61 (3e)** ENVIRONMENTALLY SENSITIVE AREAS. If the town board enacts an  
15 ordinance or adopts a resolution under this section after the effective date of this  
16 subsection .... [revisor inserts date], or amends an ordinance or resolution under this  
17 section after the effective date of this subsection .... [revisor inserts date], that is  
18 intended to protect the natural values of an environmentally sensitive area, the town  
19 board shall prepare a comprehensive written record to document its rationale for the  
20 newly created or amended ordinance or resolution. If the newly created or amended  
21 ordinance or resolution is the subject of judicial review, a court shall invalidate any

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1 part of the ordinance or resolution about which the town board is unable to produce  
2 clear, satisfactory and convincing evidence from the written record that indicates the  
3 rationale for the ordinance or resolution.

4 **SECTION 3.** 62.23 (7) (hg) of the statutes is created to read:

5 62.23 (7) (hg) *Environmentally sensitive areas.* If the council enacts an  
6 ordinance or adopts a resolution under this subsection after the effective date of this  
7 paragraph .... [revisor inserts date], or amends an ordinance or resolution under this  
8 subsection after the effective date of this paragraph .... [revisor inserts date], that is  
9 intended to protect the natural values of an environmentally sensitive area, the  
10 council shall prepare a comprehensive written record to document its rationale for  
11 the newly created or amended ordinance or resolution. If the newly created or  
12 amended ordinance or resolution is the subject of judicial review, a court shall  
13 invalidate any part of the ordinance or resolution about which the common council  
14 is unable to produce clear, satisfactory and convincing evidence from the written  
15 record that indicates the rationale for the ordinance or resolution.

16 (END)